

RECEIVED
CENTRAL FAX CENTER

SEP 21 2006

REMARKS

Applicant has carefully studied the nonfinal Examiner's Action mailed March 23, 2006. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Claim Rejections - 35 U.S.C. § 112

Applicant acknowledges the quotation of 35 U.S.C. § 112, second paragraph.

Claim 5 stands rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the term "about" is a relative term which renders the claim indefinite.

Applicant respectfully disagrees with the Office's finding that the term "about" renders claim 5 indefinite. MPEP 2173.05(b) states that relative terminology is allowed when one of ordinary skill in the art would understand what is claimed, in light of the specification. MPEP 2173.05(b)A states that the term "about" is acceptable where infringement can be determined using objective standards (*i.e.* a stopwatch). Here the term "about" can be objectively monitored using a watch and the cited prior art is not close, relative to the claimed limitation, to render the term indefinite. Withdrawal of the rejection on this ground is respectfully requested.

Claim Rejections - 35 U.S.C. § 103

Applicant acknowledges the quotation of 35 U.S.C. § 103(a). Claims 1-16 stand rejected as being anticipated by Van Emelen *et al.* Taken with Joliet. Applicant submits that the grounds of rejection are moot in light of the amendments to the claims, above.

Applicant respectfully disagrees with the finding of the Office that Van Emelen *et al.* teaches the administration of the combination of agents in a manner that encompasses the limitation "for about 48 hours." As the Office has noted, Van Emelen teaches that the combination of agents can be administered "once, or twice per *course of treatment*, which may be repeated, for example every 7, 14, 21 or 28 days." Here, Van Emelen clearly indicates that administration is to be weekly, not daily as proposed by the office. Since this element is missing

from the cited references, a *prima facie* case of obviousness has not been established (MPEP 2143).

Conclusion

Entry of a Notice of Allowance is solicited. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested.

Very respectfully,

SMITH & HOPEN

By: 

Thomas E Toner
Reg. No. 57,422
180 Pine Avenue North
Oldsmar, Florida 34677
Attorneys for Applicant

Dated: September 20, 2006

CERTIFICATE OF FACSIMILE TRANSMISSION

(37 C.F.R. 1.8 (a))

I HEREBY CERTIFY that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 1614, Attn: Donna A. Jagoe, (571) 273-8300 on September 21, 2006.

Dated: September 21, 2006


Dana Rickert